



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: MARTIN CULLEN  
FOR: TILE WET SAW WITH OUTWARDLY DIVERGING CUTTING MODE  
SERIAL NO.: 09/864,350  
FILED: May 25, 2001  
EXAMINER: M. Rachuba, Primary Examiner, Art Unit 3723

REQUEST FOR RECONSIDERATION AND  
WITHDRAWAL PURSUANT TO 37 CFR 1.143

Hon. Commissioner of Patents  
and Trademarks  
Washington, DC 20231

Sir:

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There has been no Requirement For Restriction as required by 37 CFR 1.142, and instead the examiner contends that claim 1 "has been constructively elected" and that this justifies "claim 2...[being] withdrawn from consideration as being directed to a non-elected invention".

The contention is not supported by the record. In the Office Action of 07/11/2002, it was stated:

"The examiner agrees that the method of operation of Sigetich et al may differ from applicant's method of operation, but such is not claimed as a distinct and independent invention."

The clear meaning of the above is not that applicant cannot argue patentability of his method over the method of Sigetich et al. (acknowledged to be different), but that applicant has not proffered his unanticipated method, properly recited in a claim, for consideration.

Applicant thus has done so in making of record claim 2.

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Applicant disputes the applicability of MPEP 806.05(E). More particularly, it has not been shown (1) that the process *as claimed* can be practiced by another materially different apparatus or by hand. Rather, the contrary, the examiner contends that the Sigetich et al. and applicant's apparatuses are not materially different, but are substantially the same. Applicant's claim of a patentable advance is that the substantially similar apparatuses--constructionwise--are used differently by applicant to achieve a utility that has eluded Sigetich et al.

The suggestion of the use of a method practiced "by hand" is disingenuous since the object is to reduce tedium in shaping tiles, and to go to a hand method is totally out of the question.

Nor has the alternative been shown (2) that the apparatus *as claimed* can be used to practice another and materially different process.

As claimed, claim 1 is to "a ceramic tile shaping saw", and there is nothing of record to support the contention that it can be used or "cutting wood molding". In WEBSTER'S COLLEGE DICTIONARY, a "wood molding" is defined as "a strip of contoured wood...placed on a wall, just below the juncture with the ceiling".

Additionally, as claimed, in cutting wood molding what would be the purpose of:

"...a descending movement of said housing along said path of said pivotal traversing movement effective to establish the contacting by said cutting blade centrally of a start of a first proposed cut therein during an initial pivotal traversing descent and during continued pivotal traversing descent a progressively enlargement thereof in one direction incident to contact with a length portion of said cutting blade in leading relation to said first cut and incident to contact with a length portion of said cutting blade in trailing relation to said first cut in an opposite direction until said [wood molding] is shaped into two parts, whereby said shaping is achieved in an optimum nominal time than would have entailed making said cut from one end thereof to the opposite end thereof." (Underlined reference added).

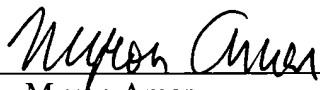
The withdrawal of claim 2 from consideration should be withdrawn, and this claim considered on the merits, should be allowed.

If the withdrawal is maintained, the restriction requirement should be made final thereby perfecting applicant's option pursuant to 37 CFR 1.184 to petition the Commissioner to review the requirement.

Since the rejection of claim 1 must be appealed by 12/24/2002, the courtesy of a prompt response to this request is respectfully requested.

Respectfully,

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Dated: October 3, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on October 3, 2002

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